



McGrathNicol

15 December 2021

**McGrathNicol  
Restructuring**

ABN 34 824 776 937

Level 19, 2 The Esplanade  
Perth WA 6000, Australia

GPO Box 9986  
Perth WA 6848, Australia

T +61 8 6363 7600

F +61 8 6363 7699

mcgrathnicol.com

**Helios Corporation Pty Ltd (Administrators Appointed) ACN 636 970 771 (Helios) IOR and ATF the  
Michael Fotios Family Trust ABN 91 504 825 460 (MFFT) (Receivers Appointed)**

**Update to creditors**

I refer to:

- the appointment of Rob Brauer and I as Administrators of Helios on 19 August 2021;
- the appointment of Rob Brauer and I as Receivers (**Receivers**) of the assets of the MFFT by way of an order of the Federal Court of Australia (**Federal Court**) on 6 September 2021; and
- our previous circulars to creditors dated 15 September 2021 and 1 December 2021.

I advise the Receivers filed an application for directions (**Directions Application**) with the Federal Court of Australia (**Court**) in the matter WAD143/2020 on 9 December 2021, to determine amongst other things the order of priority between MFFT's creditors.

I enclose a copy of the Directions Application for your reference and note that the application has been listed for mention in the Court on **Tuesday, 21 December 2021 at 9:30AM (AWST)**.

If you have any queries or require any further information regarding the Direction Application, including the material supporting the application filed by the Receivers, please contact this office (08) 6363 7635 or by emailing [acleuet@mcgrathnicol.com](mailto:acleuet@mcgrathnicol.com). Otherwise, I encourage creditors who may have an interest in the Directions Application to seek independent legal advice and, if appropriate, enter an appearance at the forthcoming hearing.

Yours faithfully

*Helios Corporation Pty Ltd (Administrators Appointed)*

Rob Kirman

*Receiver*

Enclosure:

1 Directions Application dated 9 December 2021

In association  
with



ADVISORY  
RESTRUCTURING

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 9/12/2021 2:23:45 PM AWST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Interlocutory Application - Form 35 - Rule 17.01(1)(a)
File Number:	WAD143/2020
File Title:	IAN CHARLES FRANCIS AND JOANNE EMILY DUNN AS JOINT AND SEVERAL TRUSTEES OF THE BANKRUPT ESTATE OF MICHAEL GEORGE FOTIOS v HELIOS CORPORATION PTY LTD (ACN 636 970 771)
Registry:	WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



*Sia Lagos*

Dated: 9/12/2021 4:09:44 PM AWST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



## Interim application

No. WAD 143 of 2020

Federal Court of Australia

District Registry: WA

Division: General

### In the matter of the bankrupt estate of Michael George Fotios

**Ian Charles Francis and Joanne Emily Dunn** as joint and several trustees of the bankrupt estate of Michael George Fotios

Applicants

### **Helios Corporation Pty Ltd (ACN 636 970 771)**

Respondent

To: The Applicants  
of C/- Lavan, Level 18, 1 William Street, Perth WA 6000

And to: The Respondent  
of C/- Mendelawitz Morton Commercial Lawyers, L2, 20 Kings Park Road, West Perth WA 6005

And to: Thomas Donald Birch and Martin Bruce Jones  
of C/- chew+matthews, L7, Exchange House, 68 St Georges Tce, Perth WA 6000

### Application and Court hearing

Robert Michael Kirman and Robert Conry Brauer (**Receivers**) as joint and several receivers of the Michael Fotios Family Trust (**Family Trust**) apply for the interim relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time, date and place shown in the Notice of Filing and Hearing attached. If you or your lawyer do not attend, then the Court may make orders in your absence.

### Interim orders sought

This application is made under section 92 of the *Trustees Act 1962* (WA), section 90-15 of Schedule 2 of the *Corporations Act 2001* (Cth) being the *Insolvency Practice Schedule (Corporations)*, section 90-15 of Schedule 2 of the

Filed on behalf of (name & role of party)	The Receivers		
Prepared by (name of person/lawyer)	Christopher Pearce		
Law firm (if applicable)	Blackwall Legal LLP		
Tel	(08) 6169 2500	Fax	(08) 6169 2501
Email	service@blackwall.legal		
<b>Address for service</b> (include state and postcode)	PO Box 8098 CLOISTERS SQUARE PO WA 6850	Level 26, 140 St Georges Tce PERTH WA 6000.	



*Bankruptcy Act 1966* (Cth) being the *Insolvency Practice Schedule (Bankruptcy)* and the inherent equitable jurisdiction of this Honourable Court. The Receivers seek orders and directions to determine the order of priority of entitlement, as between the Applicants, the Respondent, Messrs Birch & Jones (**Experts**) and the Receivers, from proceeds of the assets of the Family Trust and other orders in the following terms.

1. The Receivers will be justified if they treat the property of the Family Trust, and the rights of parties to access that property, on the basis that it is subject to the following entitlements in order from highest priority to lowest:
  - a. The Experts are entitled to reasonable remuneration and reasonable costs and expenses properly incurred in the performance of their duties and the exercise of their powers as Experts as contemplated by order 10 of the orders made by this Honourable Court in this proceeding on 30 November 2020, with such remuneration, costs and expenses (including the remuneration approved in order 3 of the orders made by this Honourable Court in this proceeding on 15 April 2021 (**April Orders**) and the remuneration, costs and expenses as may be approved pursuant to order 4 below) to be paid out of the assets of the Trust and secured by a first-ranking lien in accordance with order 4 of the April Orders.
  - b. The Receivers are entitled, subject to any necessary approvals, to have recourse to the assets of the Family Trust for their reasonable costs, expenses and remuneration in respect of the work undertaken:
    - i. as external administrators of the Respondent and to render the assets of the Family Trust available to meet the claims against the trust assets; and
    - ii. in the course of their receivership,

up to any amount ordered by the Court, including without limitation under order 4 of the orders made by this Honourable Court in this proceeding on 6 September 2021 and under order 5 of these orders.
  - c. The Applicants are entitled, subject to any necessary approvals, to their reasonable costs, expenses and remuneration in respect of the work undertaken in assisting the Receivers with their care, preservation and realisation of the property of the Family Trust, up to any amount ordered by the Court (including without limitation under order 6 of these orders), with such costs, expenses and remuneration to be paid out of the assets of the Family Trust and secured by a lien over the property of the Family Trust.
  - d. The Applicants, as joint and several trustees of the bankrupt estate of Michael George Fotios (**Bankrupt**), are entitled, in the following order of priority, to rights of:
    - i. reimbursement for personal expenditure (by the Bankrupt or by the Applicants) to satisfy liabilities owed by the Bankrupt in his capacity as trustee of the Family Trust; and



- ii. exoneration for unsatisfied liabilities of the Bankrupt properly incurred in his capacity as trustee,

(subject to the priorities established under the applicable statutory scheme, including under the *Bankruptcy Act 1966* (Cth)), and each supported by an equitable lien or charge against the property of the Family Trust, and each subject to any obligations of the Bankrupt or Applicants which may decrease their entitlements.

- e. The Respondent is entitled, in the following order of priority, to rights of:

- i. reimbursement for expenditure to satisfy liabilities owed in its capacity as trustee of the Family Trust; and
- ii. exoneration for unsatisfied liabilities of the Respondent properly incurred in its capacity as trustee,

(subject to the priorities established under the applicable statutory scheme, including under the *Corporations Act 2001* (Cth)), each supported by an equitable lien or charge against the property of the Family Trust, and each subject to any obligations of the Respondent which may decrease its entitlements.

- 2. The Receivers will be justified if they treat the property of the Family Trust, and the rights of parties to access that property, on the basis that the following claims should be dealt with in the following manner:

- a. In respect of any Unpaid Present Entitlement (as defined in the Experts' report annexed to the Affidavit of Thomas Donald Birch sworn 30 May 2021) ultimately established:
  - i. those entitlements are debts claimable against the Bankrupt or of the Respondent (whichever was the trustee of the Family Trust at the time the Unpaid Present Entitlement arose);
  - ii. the Applicants and the Respondent are entitled to claim against the assets of the Family Trust by reason of their rights of exoneration referred to in orders 1.d.ii and e.ii above; and
  - iii. a holder of any Unpaid Present Entitlement is entitled to subrogate to the rights of the Applicants or the Respondent referred to at sub-order ii above and is entitled to an indemnity directly against the assets of the Family Trust.
- b. If and to the extent that the matters pleaded in orders 13 to 18 of the Amended Statement of Claim filed 19 November 2020 are established, the proper characterisation of the rights arising is that:
  - i. any joint title in the Property (as defined in the Amended Statement of Claim) was severed on the Bankrupt's bankruptcy;



- ii. the satisfaction of the debt to BOQ (as defined in the Amended Statement of Claim) was performed in part (\$267,380.75) by the Applicants on the Bankrupt's behalf and in part (\$267,380.75) by Renee Fotios (**Ms Fotios**);
  - iii. the Applicants are entitled to be reimbursed in respect of the amounts satisfied on the Bankrupt's behalf and the Applicants' claim for reimbursement ranks with the Applicants' claims for reimbursement under 1.d.i above;
  - iv. having satisfied a guaranteed debt, Ms Fotios is entitled to be subrogated to BOQ's entitlement against the Bankrupt as primary borrower and has a claim against the Bankrupt's estate in that amount;
  - v. the Applicants are entitled to their right of exoneration against the property of the Family Trust in respect of that claim by Ms Fotios; and
  - vi. Ms Fotios is entitled to subrogate (if she so wishes) to the rights of the Applicants referred to at suborder v above and is entitled to an indemnity directly against the assets of the Family Trust.
- c. Property of the Family Trust to which the Applicants or Respondent are entitled by way of reimbursement or exoneration as contemplated in orders 1.d and e above, or directly to any creditor seeking to be subrogated to the rights of the Applicants or Respondent, must be distributed in the priorities established under the applicable statutory schemes, including under the *Bankruptcy Act 1966* (Cth) and the *Corporations Act 2001* (Cth).
- d. If and to the extent that Ms Fotios establishes a valid security interest under the Loan Deed executed between Ms Fotios and the Respondent on or about 9 August 2021, that security interest:
- i. ranks below the interests referred to at orders 1.a, b, c and d above; and
  - ii. is enforceable against the Respondent and ranks in priority as a secured claim against the Respondent and any assets to which the Respondent is entitled under its right of indemnity referred to at order 1.e above.
3. Further or in the alternative to orders 1 and 2, such other orders in respect of the appropriate entitlements against property of the Family Trust and priority of those entitlements as the Court thinks fit.
4. The Experts':
- a. reasonable additional remuneration of \$198,814 plus GST and expenses of \$12,236 plus GST for the period between 10 April 2021 and 4 June 2021; and
  - b. reasonable additional remuneration of \$1,000 plus GST and expenses of \$3,500 plus GST for the period between 5 June 2021 and the date of the hearing of this Application,



be approved.

5. The maximum amount of the Receivers' entitlement set by this Honourable Court in order 4 of the orders made by this Honourable Court in this proceeding on 6 September 2021 be increased to \$450,000.
6. Until further order, the maximum amount to which the Applicants are entitled under order 1.c above is \$100,000.
7. In addition to the powers granted to the Receivers under order 2 of the orders made by this Honourable Court in this proceeding on 24 September 2021, and without limiting any existing powers, the Receivers shall have the following powers:
  - a. to apply the assets of the Family Trust in satisfaction of the rights of the Experts and the Receivers under orders 1.a and b above;
  - b. to agree or make any compromise with the Applicants as to the amount of the Applicants' entitlement referred to in order 1.c and d above;
  - c. to agree or make any compromise with any creditor of the Applicants who seeks to be subrogated to the Applicants' entitlements against the property of the Family Trust referred to in order 1.d above;
  - d. subject to such an agreement or compromise being made with the Applicants and any creditor who seeks to be subrogated to the Applicants' entitlements, to apply the assets of the Family Trust in satisfaction of the entitlements of the Applicants under order 1.c and d above;
  - e. to agree or make any compromise with the Respondent as to the amount of the Respondent's entitlement referred to in order 1.e above;
  - f. to agree or make any compromise with any creditor of the Respondent who seeks to be subrogated to the Respondent's entitlements against the property of the Family Trust referred to in order 1.e above; and
  - g. subject to such an agreement or compromise being made with the Applicants and the Respondent, and any creditor who seeks to be subrogated to the Applicants' and Respondent's entitlements, to apply the assets of the Family Trust in satisfaction of the entitlements of the Respondent under order 1.e above.
8. Any person affected by these orders (including without limitation the Receivers, the Experts, and any party) have liberty to apply.
9. The Receivers' costs of this interim application be costs of the Receivership and be paid out of the assets of the Trust.

**Service on the parties and others**

It is intended to serve this application on the following persons:

1. the Applicants;
2. the Respondent;
3. the Experts; and
4. the Australian Securities and Investments Commission.

Date: 9 December 2021

PP 

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Signed by Christopher Kingsley Pearce  
Lawyer for the Receivers